



## MICHIGAN HOUSING COUNCIL

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### MEMORANDUM

To: Nathaniel Lake, Jr.  
Cabinet Secretary  
Office of the Governor

From: Scott Larry, President  
Michigan Housing Council

Date: December 17, 2007

Re: MSHDA QAP Overview and Final Recommendations

#### I. Michigan Housing Council

During the past 12 months, the members and the Board of Directors of the Michigan Housing Council have actively sought to engage the Michigan State Housing Development Authority ("MSHDA") and its staff in a dialogue regarding matters of grave concern to the State of Michigan and to the affordable housing community, including the proposed 2008-2009 Qualified Allocation Plan (the "QAP"). Historically, our members have accounted for more than 80% of the production in the MSHDA Direct Loan and Pass Through programs as well as a significant portion of the production under the Low Income Housing Tax Credit Program. Yet, the concerns of our members regarding the QAP and other program and policy changes at MSHDA during the past year have largely been ignored. [See "*Timeline of MHC Policy Activities*," *Exhibit A*.]

The Michigan Housing Council (MHC) is one of the oldest statewide associations of affordable housing professionals in the United States and represents for profit and nonprofit owners, developers, managers, general contractors and subcontractors, architects, engineers, attorneys, financial groups, insurers, accountants, market analysts, tax credit syndicators, and other consultants and businesses involved with Michigan's affordable housing industry.

The MHC is governed by a Board of Directors. The Board of Directors is nominated by the members and elected by the members of the MHC for two year terms. Like any trade association, the MHC and its Board represent a diverse group of members and interests. The MHC Board initiates general policy statements on behalf of the membership, allowing individual members the freedom and flexibility to pursue concerns unique to their business. [See "*MHC Membership and Board Profiles*," *Exhibit B*.]

#### II. The QAP is Incomplete

The QAP will be used to allocate federal low income housing tax credits in the State of Michigan during the next two years, requiring over \$500 million dollars of private capital to be invested in Michigan. Although many of our members support the policy objectives behind the QAP, the overall plan is an administratively burdensome and flawed plan that will endanger the supply of private investment capital that has consistently supported the development, rehabilitation, and

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preservation of affordable housing in the state. Simply stated, the QAP is the wrong plan at the wrong time given the Michigan economy and the unprecedented loss of construction related jobs during the past year, and we are deeply concerned that, if approved, the QAP will give already reluctant national investors one more reason not to invest in Michigan.

MSHDA Chair Bernie Gliberman and Vice-Chair Marianne Udow also believe the QAP is a flawed document and have committed publicly to retaining a national expert to assess and to fix the QAP in the next 30 to 60 days. Despite these concerns, however, Mr. Gliberman, Ms. Udow, and other MSHDA members approved the QAP on December 6, 2007, delaying to another day and another time the consideration of essential modifications to the QAP that would maximize the economic potential of the low income housing tax credit program.

As a result, MSHDA has forwarded the QAP to the Governor and has requested that she approve of an incomplete plan – a plan that will be subject to further review and changes by an unnamed and not-yet-hired national consultant; a plan that will require additional public hearings and comment; and a plan that must again be reviewed and approved by MSHDA and the Governor.

### **III. Legacy of Lost Economic Opportunities**

During the past year, MSHDA has had access to an unprecedented \$700 million in tax-exempt bond authority. By comparison, the State of Michigan's total allocation of tax exempt bond cap authority is just over \$900 million. Yet, despite receiving record amounts of tax-exempt bonding authority, MSHDA has generated comparatively little economic activity on behalf of the State of Michigan.

This has not always been the case. In previous years, MSHDA received annual allocations of tax-exempt bond cap authority ranging between \$225 and \$250 million. With these funds, MSHDA was able to balance its priorities while maximizing its economic impact through a series of highly effective, targeted programs that included: 1) a direct lending multi-family loan program; 2) the Modified Pass-Through Program; 3) a single family loan program; and 4) a mortgage credit certificate program.

During the fourth quarter of 2006, MSHDA closed the Modified Pass-Through Program and the Mortgage Credit Certificate Program for lack of tax-exempt bond cap authority. At the same time, however, MSHDA elected in December of 2006 to carry forward approximately \$216 million of unused tax-exempt bond authority into 2007. MSHDA received another \$485<sup>1</sup> million tax-exempt bond authority from the State Treasurer in 2007. Yet, the Modified Pass-Through Program and the Mortgage Credit Certificate Program remain closed for lack of tax-exempt bond authority.<sup>2</sup>

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<sup>1</sup> First Allocation: \$150,000,000 (February 2007); Second Allocation \$150,000,000 (Late Summer 2007); and Third Allocation \$185,000,000 (Early Fall 2007).

<sup>2</sup> It is believed that MSHDA will again carry forward unused tax-exempt bonding authority from 2007 into 2008. Although the exact amount of unused bond cap is known only to MSHDA, the carry forward amount is expected to be less than \$50 million. At this point, it would be difficult to understand the circumstances under which MSHDA would receive any additional bond cap in 2008 until the QAP and other program and policy changes maximizing the economic benefits of MSHDA programs to the State of Michigan have been adopted by the MSHDA Board and/or approved by the Governor.

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The demand for MSHDA programs and services has always exceeded the availability of state and federal resources like tax-exempt bonding authority, and MSHDA has routinely identified multi-family pipelines in excess of \$400 million to justify its request for tax-exempt bond cap authority to the State Treasurer. MSHDA's current claim, however, that it lacks tax-exempt bond authority to meet its needs is artificial and rings hollow given MSHDA's historical ability to balance priorities, sustain an array of affordable housing programs, and provide an economic stimulus to the State of Michigan using a fraction of the tax-exempt bond cap authority available to MSHDA during 2007. There has been no shortage of tax-exempt bond cap authority at MSHDA during the past year; rather, these resources have been consciously redirected and expended in other program areas without consideration of the economic impact of such decisions, without benefit of public discussion or debate by the affordable housing community or the MSHDA Board, and without thought to the Governor's stated objective to use public funds to spur the Michigan economy.

MSHDA is statutorily charged with creating jobs and energizing the Michigan economy. [See generally MCL 125.1401(5).] However, the sustained pattern of policy gridlock at MSHDA regarding its lending programs and the use of wedge issues by MSHDA to drive the public policy debate regarding the QAP has allowed substantial economic benefits to be denied to Michigan citizens with little or no public discussion or accountability when you consider the following:

- The decision of MSHDA staff - without MSHDA Board approval - *to suspend Michigan's LIHTC program indefinitely during the second half of 2007 delaying a potential \$400 million economic stimulus to the Michigan economy;*
- The decision of MSHDA staff - without MSHDA Board approval - *to suspend indefinitely MSHDA's Pass-through Program during 2007 eliminating a potential additional \$400 million economic stimulus for the Michigan economy;* and
- The failure of MSHDA *to work cooperatively with the affordable housing industry to achieve broad consensus regarding changes to MSHDA's direct lending programs has contributed to a nearly 50 percent decline in MSHDA's multi-family housing production during calendar 2007.*

Under even the most optimistic scenario, the failure of MSHDA to complete its work on the QAP prior to requesting the Governor's approval will only further delay significant economic benefits under the low income housing tax credit program to the State of Michigan well into the second or third quarter of 2008. The economic consequences created by the uncertainty with the QAP and the Michigan tax credit program will be lower prices from investors for Michigan developments and decreased demand for Michigan product as national investors pursue more conventional, predictable tax credit investments in other states.

#### IV. The QAP is NOT a Consensus Document

On July 17, 2007, we wrote to MSHDA expressing our concern that based on our experience during the past two year, it was "unlikely that the initial draft of the QAP would be a unifying document." Sadly, we were correct. The QAP is not a consensus building document. The draft QAP needlessly pits community against community, city resident against city resident, homeless advocates against affordable housing advocates, and for-profit developers against non-profit

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developers. The draft QAP undermines the very relationships in the affordable housing community that former MSHDA Executive Director Terry DuVernay and others believed to be important and that they worked to develop and maintain during the past 25 years.

As part of the QAP process, MSHDA staff has also instigated - and presumably MSHDA has funded - a sustained campaign of misinformation designed to undermine the credibility of individuals and organizations in opposition to the QAP. For example, MSHDA representatives have implied that the MHC opposes the DHHP holdback; yet, the MHC Board unanimously approved a resolution in support of the DHHC holdback. MSHDA representatives have implied that the policies of the MHC Board are not representative of the MHC members; yet, MHC Board members are nominated and elected directly by MHC members. MSHDA representatives have implied that the MHC opposes the inclusion the Governor's Cool Cities Initiative as part of the QAP; yet, the MHC has supported the inclusion of the Governor's Cool Cities Initiative since it was first proposed for inclusion into the QAP in 2003.

At the request of the Governor and her staff, members of the MHC met with MSHDA staff prior to the MSHDA December 6<sup>th</sup> Special Board meeting and tried to find consensus on the proposed QAP. None was forthcoming, and the plan before the Governor is essentially the same plan presented by staff at MSHDA's November Board meeting. Issues on which there has been no dispute, like the Detroit set aside, remain unchanged. Marginal changes with limited impact to the overall QAP have been made. Yet, key questions and concerns regarding the radical changes to the LIHTC program and their effect on private investment in the State of Michigan remain unaddressed. Even in those areas where MSHDA staff acknowledged that improvements to the QAP should be made, the claim was made that "there was no time" to do so. Therefore, the "consensus" that the Governor had been seeking, and continues to seek even today, has not been reached.

Members of the Michigan Housing Council have reviewed the QAP adopted by the MSHDA Board and strongly recommend that the Governor not approve the plan for the following reasons:

- 1) **The QAP rewards projects that are financially risky and difficult to underwrite, even with additional public resources used to subsidize them, thereby making Michigan affordable housing market less desirable to the national investment community.**

**Examples from the QAP:** The QAP requires 90 year affordability, severely limiting investor interest in Michigan properties and severely limiting exit strategies for private investors at end of the federally mandated compliance period of 30 years. The QAP creates needless paperwork by requiring multiple investor letters for each project, which discourages initiative by investor groups who later may lose the right to proceed with the project.

- 2) **The QAP ignores national trends and market realities severely restricting incentives for the preservation of affordable housing.**

**Examples from the QAP:** The QAP caps the tax credit allocation that preservation projects may receive, undermining the financial feasibility of these projects and jeopardizing scarce federal resources targeted to extremely low-income Michigan households. Many outstanding preservation developments completed in the past

few years would not be feasible under this QAP. The QAP contains confusing new language providing an "absolute priority" to preservation projects without regard to the application scoring criteria for other tax credit developments. The proposed QAP will make it significantly more difficult to develop new or preserve existing low-income properties in Michigan's rural communities, and will likely eliminate the possibility of using the credit to support federal programs designed to promote rural housing development.

- 3) **The QAP is an unfinished work product as acknowledged by the MSHDA Board and by MSHDA staff.**

**Examples from the QAP:** The MSHDA Chair and Vice Chair have publicly committed to retaining a national expert to assess and fix the QAP in the next 30 to 60 days. MSHDA staff acknowledged in a meeting with Cabinet Secretary Nathaniel Lake that certain New Urbanism and Green Building Threshold Requirements needed refinement but that there was inadequate time to make any changes to the QAP. The QAP contains multiple references to yet unpublished MSHDA policy bulletins that will make further revisions to the QAP without public debate or input or MSHDA Board review.

- 4) **The QAP ignores the rule of law.**

**Examples from the QAP:** The QAP fails to demonstrate the need for many of its new priorities as required by federal law. The QAP creates new allocation categories that minimize, if not render meaningless, the legislative mandates for the allocation of credit as enacted by the Michigan legislature. The QAP's definition of rural projects conflicts with the definition for such projects contained in the MSHDA Act. The QAP is inconsistent with the declared Congressional intent of the Low Income Housing Tax Credit Program which states that Congress "intended that any allocation procedure established by the governor or State legislature give balanced consideration to the low-income housing needs of the entire State." [See generally, *The Joint Committee Report on the Low Income Housing Tax Credit and General Explanation Report of the Low Income Housing Tax Credit.*]

- 5) **The Underwriting Standards of the QAP are Unrealistic.**

**Examples from the QAP:** In addition to persistent and deep concerns from the investment community with the QAP, underwriting staff from the Great Lakes Capital Fund randomly choose and analyzed 5 developments that had been previously funded under the existing QAP using the underwriting criteria of the proposed November QAP. Based on this analysis, 4 of the 5 projects were financially infeasible under the proposed QAP. The analysis prepared by Great Lakes staff was no different than any investor would prepare as part of a due diligence process leading to an in a particular development. The analysis was shared with and dismissed by MSHDA on November 20, 2007. Great Lakes Staff re-analyzed the same developments against the stated underwriting criteria of the QAP passed by the MSHDA Board on December 6, 2007. The result remains the same. Good projects that were funded under the current QAP would not be financially viable under the proposed QAP. [See "*Analysis: Cross Section of Actual Projects Under Current (Old) QAP and the Proposed QAP*," Exhibit C.]

**V. QAP Recommendations of the Michigan Housing Council**

Under state and federal law, the Michigan QAP must be approved by the Governor after notice to the public and public hearing to become effective. Without such approval, the current QAP remains in effect. There is no deadline for approval contained in state and federal law governing the QAP; rather, state and federal law provide only general parameters under which a QAP may be approved by the Governor. Further, there exists no controlling state or federal authority specific the QAP limiting a) the scope of review of the Michigan QAP by the Governor or b) the executive powers of the Governor with regard to the consideration and/or approval the Michigan QAP. [See generally MCL 125.1422(b), and Sections 42(m)(1)(A)(i) and 147(f)(2) of the Internal Revenue Code of 1986, as amended.]

Based on the foregoing, we urge the Governor to use her statutory authority to return the proposed QAP unapproved to MSHDA and to provide further guidance to MSHDA regarding the QAP in order to maximize the economic benefits of the tax credit program to the State of Michigan. Specifically, we recommend the following:

- A. That the Governor seek an independent assessment of the QAP by retaining a national tax credit expert to assess the current plan and to advise her with regard to what steps may be necessary in order to conform the QAP to national standards and models for the allocation of the low income housing tax credit.
- B. That the Governor retain Jeanne Peterson, a principal with The Reznick Group and a nationally recognized tax credit expert, to assist her in her review of the QAP.
- C. That the Governor favorably consider the following options, individually or in combination with other options, with regard to the QAP approved by the MSHDA Board:
  1. Return the QAP to MSHDA for further revision, requesting specific corrections to be made and requiring consensus between and among all stakeholders prior to final approval;
  2. Reject the QAP and request an immediate funding round for at least 50% of the State's 2008 tax credit allocation under the old QAP;
  3. Reject the QAP and request immediate changes to the current QAP eliminating the lottery, providing for a 50% allocation holdback to the cities of Detroit, Highland Park and Hamtramck and providing for an immediate tax credit funding round under old QAP, as amended; or
  4. Issue a "veto message" under any or all of the options above, stating that while the broad policy objectives are very important, time and care are needed to prepare an approach that will address these issues properly and that the urgency throughout this state is to provide affordable housing which has an economic development impact that can immediately assist not only the citizens in need of such housing, but assist the general economy of the state significantly.

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#### VI. Changes to MSHDA Direct Lending and Modified Pass-Through Programs

Apart from the concerns regarding the QAP, proposed changes by MSHDA to its direct lending programs and the Modified Pass-Through Program will also hinder the ability of Michigan projects to compete in the affordable housing marketplace. The attractiveness, workability and affordability of these programs will ultimately dictate the level of demand by national investors and others to invest in Michigan and in housing developments financed by MSHDA. Extreme care must be taken in setting requirements and establishing new processes and rules, so as not to affect adversely the attractiveness of the MSHDA direct loan programs or the Modified Pass-Through Program, to reduce further MSHDA's loan volume, or to make MSHDA financed developments less attractive to investors.

Since the QAP is a critical component part to the underwriting of these projects, no changes to MSHDA's direct lending programs or the Modified Pass-Through Program should be considered or made until the scope and direction of changes to the current QAP have been determined and the QAP has been approved by the Governor.

A timeline of MHC efforts to engage MSHDA in a dialogue regarding these matters and our recommendations regarding proposed changes to MSHDA's direct lending and Modified Pass-Through programs are located in Exhibit D.

#### VII. Conclusion

On behalf of our members and the MHC Board, I want to thank you and say once again that we greatly appreciate the time and effort you have expended in hearing our concerns, and the respect you have shown in hearing our concerns. We look forward to working with you and the Governor on this and other initiatives to keep Michigan competitive in the affordable housing marketplace. As always, please feel free to contact me should you have any question or comments regarding these critical matters.

## Exhibit A

### Timeline of MHC Policy Activities

1. MHC recommendations dated January 15, 2007, to MSHDA regarding changes to MSHDA Market Study Review Process.
2. MHC letter dated January 23, 2007, to MSHDA Executive Director Michael R. DeVos providing recommendations for the allocation of tax-exempt bond cap. Mr. DeVos did not respond.
3. MHC public statement dated April 24, 2007, before the First MSHDA Listening Session requesting a second tax credit funding round in 2007.
4. MHC letter dated April 27, 2007, to MSHDA Executive Director transmitting MHC testimony including its request for a second tax credit funding round in 2007.
5. MHC public statement dated May 10, 2007, before the Second MSHDA Listening Session requesting a second tax credit funding round in 2007.
6. MHC public statement dated May 18, 2007, before the Third MSHDA Listening Session requesting a second tax credit funding round in 2007.
7. MHC public statement dated May 22, 2007, before the Fourth MSHDA Listening Session requesting a second tax credit funding round in 2007.
8. MHC Freedom of Information Request dated May 7, 2007, for information regarding the allocation of bond cap between MSHDA programs. MSHDA responded that such information is not tracked on a regular basis.
9. MHC letter dated July 11, 2007, to MSHDA Executive Director Michael R. DeVos MSHDA requesting a second tax credit funding round in 2007. Mr. DeVos did not respond.
10. MHC letter dated July 12, 2007, to MSHDA Executive Director Michael R. DeVos regarding proposed changes to MSHDA direct lending program. Mr. DeVos did not respond.
11. MHC letter dated July 19, 2007, to MSHDA Executive Director Michael R. DeVos identifying certain logistical and economic problems with his decision to a second tax credit funding round until his Qualified Allocation Plan (QAP) has been approved. Mr. DeVos did not respond.
12. MHC letter dated August 1, 2007, to MSHDA Executive Director Michael R. DeVos transmitting the "White Paper of the Michigan Housing Council regarding the Qualified Allocation Plan of the Federal Low Income Housing Tax Credit Program".
13. MHC Talking Points regarding the proposed QAP, August 2007.
14. MHC publication "MSHDA as a Powerful Economic Activity Engine," August 2007.
15. MHC letter dated September 6, 2007, to MSHDA's Acting Director of Legal Affairs commenting on the proposed QAP.



16. MHC letter dated September 10, 2007, to MSHDA's Acting Director of Legal Affairs requesting information regarding the availability of soft funds and subsidies to assist extremely low-income households. MSHDA did not respond.
17. MHC statement dated September 13, 2007, presented at the first MSHDA QAP public hearing.
18. MHC statement dated September 19, 2007, presented at the second MSHDA QAP public hearing.
19. MHC statement dated September 26, 2007, presented to the MSHDA Board.
20. MHC statement dated September 28, 2007, presented at the third MSHDA QAP public hearing.
21. MHC statement dated October 24, 2007, presented to the MSHDA Board.
22. MHC statement dated November 28, 2007, presented to the MSHDA Board.
23. Joint Meeting with representatives of MSHDA, Great Lakes Capital Fund, MHC and the Office of Governor Granholm, December 4, 2007.
24. Open Letter/MHC statement dated December 6, 2007, presented to the MSHDA Board.

## **Exhibit B**

### **Michigan Housing Council – Board of Directors**

The Michigan Housing Council Board of Directors is comprised of 21 voting members, and 2 ex-officio members. Each Voting Director serves a 2 year term.

#### **Breakdown by activity – voting directors**

12 Developers (9 of these also perform property management)  
3 Investors/Lenders  
1 Market Analyst  
1 Architect  
1 Accountant  
2 Attorneys  
1 Property management company

#### **Voting Directors from Non Profit Organizations**

Anthony Barker – Presbyterian Villages of Michigan  
Mark McDaniel – Great Lakes Capital Fund  
Patricia Motter – Shelter of Flint

#### **Breakdown by region- voting directors**

10 from Southeast Michigan  
8 from Central Michigan (including Milford and Flint)  
1 from Western Michigan  
2 from outside Michigan

#### **Voting directors from Wayne County**

Freddie DuBose – Detroit  
Jerry Krueger –Detroit  
Kathy Makino-Leipsitz – Wayne  
Sheldon Winkelman – Detroit  
Dennis Varian – Dearborn

#### **Voting directors with business activity in Detroit**

Freddie DuBose	Mark McDaniel
Bruce Gerhart	Kelly Murdock
Joanne Golden	Ted Rozeboom
James Keledjian	Dan Tosch
Jerry Krueger	Dennis Varian
Scott Larry	Mark Wiedelman
Kathy Makino-Leipsitz	Linda Yudas

## **Michigan Housing Council – Membership**

The Michigan Housing Council has 196 members from 109 member organizations. Each organization has one vote in the election of the Board of Directors

### **Breakdown by activity – organizations**

- 10 Developers only
- 37 Developer with Contracting and/or Property Management
- 12 Investors/Lenders
- 6 Property Managers
- 6 Contractors
- 4 Architects
- 9 Law firms
- 6 Accounting firms
- 7 Insurers
- 2 Market analysis firms
- 4 Consulting firms (HR, Environmental, etc)

### **Non Profit Organizations**

Presbyterian Villages of Michigan  
Great Lakes Capital Fund  
Shelter of Flint  
Acera  
People as One

Community Housing Network  
MHT  
NCCS Center for Housing  
CSI Support Services

### **Breakdown by region**

- 48 from Southeast Michigan (including 8 from Detroit, 2 more from Wayne County)
- 31 from Central Michigan (including Milford and Flint)
- 10 from Western Michigan
- 1 from NE Michigan
- 19 from outside Michigan

### **Number of Member Organizations with business interests in Detroit**

- 24 Developers (includes those with Property Management and/or Contracting)
- 9 Investor/Lenders
- 4 Property Managers
- 5 Contractors
- 8 Law firms
- 5 Accounting firms
- 3 Architectural firms
- 5 Insurance firms
- 4 Consulting firms

67 Member Organizations do business in Detroit

## Exhibit C

### Analysis of a cross section of actual projects Under Current (Old) QAP and the Proposed QAP

Prepared By: Great Lakes Capital Fund  
December 4, 2007 [Updated: December 14, 2007]

#### Background/ Assumptions

- Four of the five projects listed on the following pages were discussed with MSHDA staff on November 20, 2007.
- At that time, MSHDA staff clarified several things such as:
  - number of days a supportive unit needed to remain off the market until a qualified tenant is identified;
  - definition of "Supportive Housing Tenants;" and
  - MSHDA's application of rental subsidies, particularly on 4% LIHTC deals.
- After that meeting, MSHDA produced another draft QAP. It clarified MSHDA's intention with regard to first and second bullets above. It significantly changed the threshold requirements for the "green communities & new urbanism" criteria, following many of the recommendations provided by GLCF staff.

[December 14, 2007 Update: The QAP approved by the MSHDA Board reduced the requirement for "green" features in preservation projects. Now, instead of requiring all items with a 15 year energy savings pay-back, developers must install those with a 10 year pay-back. This change will reduce project costs by approximately 4 percent. The analyses below for preservation projects have been reduced accordingly.]

- Supportive Housing Tenants: At the November 20, 2007, meeting, MSHDA staff said the 10% set aside does not require a developer to rent a unit to an individual who can't afford the lowest category of AMI rent in the project. In addition, MSHDA staff said they will help developers connect with agencies that provide supportive services (without charging the project for these services). MSHDA staff further stated if such an agency can't be found, the developer can rent the unit to any tenant who is income qualified. These verbal clarifications haven't been adequately addressed in the proposed QAP. The Cap Fund suggests the following:

The 10% special needs criteria should contain an exemption provision that if a developer (with MSHDA's assistance) cannot find a supportive services provider that will provide services at no cost to the development, then the owner is not required to provide services to the supportive housing tenants and can rent the units priced at 30% AMI to any income qualified tenant.

- GLCF staff revisited the projects discussed at the November 20, 2007, meeting to determine what the impact would be from the "old" QAP and the "proposed QAP". These are summarized below.

**I. NON-DETROIT PROJECTS****A. Maplewood Manor – 51 unit senior, 4%, Preservation, small town/rural**

All of the units have project based vouchers, so there is no reduction in the 1<sup>st</sup> mortgage due to the very low income targeting requirements under the proposed QAP.

However, the threshold "green requirement" for preservation deals will add 7% (or \$240,116) to the total development costs. This amounts to an increase of \$4,708 per unit.

[The most recent QAP requirements will add 3% instead of 7% to development costs resulting for "green" improvements resulting in added costs of \$102,907 (instead of \$240,116); so, this project could be feasible under the proposed, revised QAP.]

	<u>Under the old QAP:</u>	<u>Under the proposed QAP:</u>
Deferred developer fee/		
GP Capital Contribution	\$0	\$164,000
<b>***REVISED:</b>	<b>\$0</b>	<b>\$ 26,791</b>

**B. Birch Lake Apartments – 48 unit family, Preservation (4% Acq./9% rehab credits), rural**

With the proposed income targeting requirements for preservation (10% of units priced at 30% of AMI and 10% priced at 40% AMI ...and using local, rather than the statewide AMI, fewer and fewer rural apartment projects will be feasible (unless MSHDA provides development or rent subsidies).

Old QAP: This project, with no rental assistance, will be able to service a first mortgage of \$630,000. Deferred Developer fee is \$35,420 or around 10%.

Proposed QAP: with the very low income targeting, there will be a loss in annual income of \$23,000. Consequently, the first mortgage must be reduced from \$630,000 to \$400,000 to achieve an acceptable debt service coverage ratio. In addition, with each supportive housing unit being held vacant for approximately 30 days per year, a special reserve of \$252,720 would need to be added to the project. The general partner must defer/contribute 50% of their developer fee. The project would need a subsidy to become financially feasible.

[December 14, 2007 Update: By including required "green" improvements, projects costs will increase by 3% (or \$41,000). Approximately, 70% of this can be supported by tax credit equity, so the net increase to the subsidy required will be \$12,000.]

	<u>Under the old QAP:</u>	<u>Under the proposed QAP:</u>
Deferred developer fee/		
GP Capital Contribution	\$0	\$35,420
Development subsidy required	\$0	\$382,066
<b>** Additional Subsidy Required</b>		
<b>Due to "Green" Add-Ons:</b>	<b>\$0</b>	<b>\$ 12,000</b>
<b>** REVISED SUBSIDY REQ'D</b>	<b>\$0</b>	<b>\$394,066</b>

[December 14, 2007 Update: This project is still infeasible under the proposed QAP – unless MSHDA provides nearly \$400,000 of direct subsidy and/or long-term rental assistance subsidies for 20% of the units that need to be targeted to households earning 30% or 40 % of area median income. Generally, MSHDA has not provided these types of subsidies to projects financed by rural development.]

This proposed rural preservation project in Mason county has been operating with rents priced affordably for households earning between 48% to 60% of area median income. It needs the type of rehab that only the LIHTC program can bring. Under the old QAP, this would have been possible without the need for additional public subsidy; but under the proposed QAP, the project is infeasible because rents for 20% of the units would have to be reduced to 30% & 40% of AMI. This would require the bank loan to be reduced significantly because there is less rental income.

An additional problem caused by the proposed QAP would be that 20% of the current tenants would be "over income." They would not qualify for the units that need to be rented to households earning 30% & 40% of AMI, so they would not be able to renew their leases and they would be forced to find housing elsewhere.]

## II. DETROIT PROJECTS

### 9% New Construction comments – Hubbard

- In looking at a 9% new construction project in Detroit, one must consider the impact on the development budget of credit limits and green requirements.
- Due to the requirement that the supportive units, which make up 10% of each project, are required to be held vacant for at least 30-days for a supportive tenants to move in, the mortgage amount would decrease by \$40,000 due to the lost revenue from the projected additional vacancy.
- While the cost of green requirements vary from project to project, these requirements could either tip a project over the 221(d)(3) limits or cause a project to have fewer units due to the \$750,000 credit limit per project. Currently, as a 44-unit project, the project would require at least \$800,000 in tax credits, exceeding the proposed limit. With the proposed credit limit, the project would have a gap of \$627,506. In a growing area such as Southwest Detroit, it is important for each project, especially a scattered site development like Hubbard Communities, to create a critical mass so that the project can be successful and make a strong and positive in the community.
- Concerning the green requirements in the QAP, it has been estimated by performance housing professionals that a 15-year payback requirement for new construction projects would add about 3% of development costs to the construction budget. For Hubbard Communities, that would add an additional \$247,801 in costs.
- By giving automatic 221(d)(3) waivers to projects that adhere to green guidelines and increasing the per project credit limit, new construction developments in Detroit can be financed and can be operated more efficiently.

Hubbard new QAP cost - Green Req: \$247,801

Supportive 30-day: \$40,000

Total Added Cost: \$287,801

current QAP:

proposed QAP:

Deferred Development Fee/GP Capital \$173,705

\$1,044,560

[December 14, 2007 Update: Hubbard Communities can generate \$802,885 in tax credits per year based on current development costs. With the \$750,000 project limit in the proposed QAP, the loss in tax credit equity would have created a gap of \$627,506. This project is still infeasible under the proposed QAP.]

Although the 223(d)(3) limits would not have hindered the development of Hubbard Communities, MSHDA should consider giving automatic waivers of the 221(d)(3) limits to projects that adhere to the mandatory "green" requirements under the proposed QAP.]

#### 4% Preservation comments – Charring

- The new requirements from the proposed QAP would have a significant impact on 4% preservation projects.
- To support significant improvements to projects in immediate need of rehabilitation, many 4% preservation projects have targeted rents in the 50% AMI and 60% AMI range. By requiring that 10% of units be available to special needs tenants at 30% AMI or below, one typical 4% preservation project would have suffered a decrease in mortgage by \$540,000.
- Due to the requirement that the supportive units, which make up 10% of each project, are required to be held vacant for at least 30-days for a supportive tenants to move in, the mortgage amount would decrease by \$200,000 due to the lost revenue from the projected additional vacancy.
- While MSHDA recognizes that a deep subsidy contract could help meet the 10% at 30% AMI requirement for preservation projects, MSHDA must recognize that not all preservation projects have a long-term project-based subsidy contract. Some of the most successful 4% preservation projects have been the acquisition and rehabilitation of HUD Sec 236 decouplings. Once the decoupling occurs, the project-based Rental Assistance Payments convert to tenant-based vouchers.
- On top of all this, the developer fee would have dropped from \$2 million to \$1.7 million based on the new developer fee calculation, making projects more difficult to do and providing less incentive for developers to rehabilitate these properties. This would be a lost opportunity, especially for projects with expiring rental or interest subsidy contracts.
- Concerning the green requirements in the QAP, it has been estimated by performance housing professionals that a 15-year payback requirement for new construction projects would add about 7% of development costs to the construction budget. For Charring Square, that would add an additional \$1,212,132 in costs. The Capital Fund's tax credit equity would only cover \$387,899 of the costs, leaving a further gap of \$824,233.
- With all these requirements and without MSHDA's financial support, a 4% preservation project that works financially would in an instant become financially infeasible since deferred fee would be greater than 70%, even with \$2 million in fee to potentially defer.

[December 14, 2007 Update: MSHDA reduced the "green" requirement pay-back period from 15 to 10 years. Even so, it has been estimated by performance housing professionals that a 10 year pay-back requirement for rehabilitation projects would add about 3% of development costs to the construction budget. For Charring Square, that would add an additional \$519,485 in costs. The Capital Fund's tax credit equity would only cover \$166,241 of the costs, leaving a further gap of \$353,244.]

#### Charring proposed QAP cost -

SN Rent limits:	\$540,000 or \$40,320/year
Supportive 30-day:	\$200,000
Green Req:	\$824,233

Total Added Cost: \$1,564,233

	<u>current QAP:</u>	<u>proposed QAP:</u>
Deferred Development Fee/GP Capital	\$761,915	\$2,326,148

**\*\* 12/14/07 UPDATE: Charring proposed QAP cost -**

SN Rent limits:	\$540,000 or \$40,320/year
Supportive 30-day:	\$200,000
Green Req:	\$519,485

Total Added Cost: \$1,295,849

	<u>current QAP:</u>	<u>proposed QAP:</u>
Deferred Development Fee/GP Capital	\$761,915	\$2,233,321

Although the 10 year pay-back period for "green" requirements has been reduced from 15 years to 10 years, the restrictions from the new QAP would still render the Charring Square project financially infeasible. The Charring Square project typically targets to residents that are above 43% AMI. Should the property be required to target 10% of the units to 30% AMI residents without project-based subsidies, the project would lose a significant amount of rental income, thereby reducing the mortgage amount and increasing the funding gap. At the same time, residents who occupied the units that now must be targeted to 30% AMI residents would risk losing their home if they were over income.

**9% Preservation comments – Greenhouse**

Greenhouse is a 200-unit preservation project located in Detroit, MI. This project is characteristic of many projects developed in the 1970's with a project-based Section 8 contract and a HUD mortgage.

Due to the \$750,000 credit limit for preservation projects in Detroit, a development that would normally have \$986,216 in credit would have a significant gap. At \$750,000 in credit, Greenhouse would need \$2.17 million to cover the gap.

Due to the requirement that the supportive units, which make up 10% of each project, are required to be held vacant for at least 30-days for a supportive tenants to move in, the mortgage amount would decrease by \$200,000 due to the lost revenue from the projected additional vacancy.

Concerning the green requirements in the QAP, it has been estimated by performance housing professionals that a 15-year payback requirement for rehab projects would add about 7% of development costs to the construction budget. For Greenhouse, that would add an additional \$1,170,723 in costs.

**\*\* 12/14/07 UPDATE: ALTHOUGH MSHDA REDUCED THE GREEN REQUIREMENT PAYBACK PERIOD FROM 15 YEARS TO 10 YEARS, PERFORMANCE HOUSING PROFESSIONALS HAVE STILL ESTIMATED THAT A 10-YEAR PAYBACK REQUIREMENT FOR REHABILITATION PROJECTS WOULD ADD ABOUT 3% OF DEVELOPMENT COSTS TO THE CONSTRUCTION BUDGET. FOR GREENHOUSE APARTMENTS, THAT WOULD ADD AN ADDITIONAL \$501,739 IN COSTS.**

Greenhouse new QAP cost -

Credit limits:	\$2,172,966
Supportive 30-day:	\$200,000
Green Req:	\$1,170,723
<u>Total Added Cost:</u>	<u>\$3,543,656</u>



	<u>current QAP:</u>	<u>proposed QAP:</u>
Deferred Development Fee/GP Capital	\$41,054	\$3,584,710

**\*\* 12/14/07 UPDATE: Greenhouse new QAP cost -**

Credit limits:	\$2,172,966
Supportive 30-day:	\$200,000
Green Req:	\$501,739
<u>Total Added Cost:</u>	<u>\$2,874,705</u>

	<u>current QAP:</u>	<u>proposed QAP:</u>
Deferred Development Fee/GP Capital	\$41,054	\$2,915,759

Even though the "green" requirements have been slightly relaxed, the restrictions from the new QAP would still cause Greenhouse Apartments to be financially infeasible. Greenhouse Apartments can generate \$986,216 in tax credits per year based on current development costs. With the \$750,000 project limit, the loss in tax credit equity would have created a gap of \$2.17 million. The project is still infeasible under the new QAP.

Unlike a new construction project, there would be no way to shrink the size of a one-building, 200 unit senior development. Under the 4% program, the development would not be able to support a \$28,000/unit rehabilitation without over \$3.6 million in soft debt. With the credit restrictions under the 9% program in the new QAP, it is almost assured that 200 senior households would not have received improved and safer apartments and common areas.

## Exhibit D

### *Recommendations of the Michigan Housing Council regarding proposed changes to MSHDA's direct lending and Modified Pass-Through programs*

#### Loan Parameters

- Market Studies

The proposed Lending Parameters provide for MSHDA to directly contract for required market studies. Market studies are critical in the development process and needed very early, often prior to an application being submitted to MSHDA. As a result, prudent developers will hire and pay market analysts whose judgment and opinion they trust. To be required to then pay MSHDA for a study performed by an analyst that the Developer may or may not deem competent, will double cost.

Removing the connection between the market analyst and the sponsor severs a key relationship in the development process and will not only cause delays but lower the quality of the development.

Finally, it should be noted that even the best studies and analyses, many performed by the State of Michigan's various agencies, or under contract to them, failed to predict the depth and breadth of the current economic downturn in Michigan. It is this reality, not poorly prepared market studies, that is at the root of the stresses being felt by many Michigan communities. Additionally, one of the bases for MSHDA's recommendation for adopting this is an assertion that a nationally recognized firm was engaged to study best practices in other states and that the changes are consistent with their findings. The MHC asked for a copy of this report and was advised that none existed. In fact, the "research and report" was actually one telephone conversation asking what other states do.

Conclusion: Use of market analysts will lead to increased costs, longer processing times and lower quality analysis, with no reduction in disputes regarding findings, and no reduction in problem projects.

Recommendation: The MHC supports the creation of a closed list of certified market analysts to be created and maintained by MSHDA. Market analysts would be required to complete an application to be eligible and meet prescribed professional standards, skills, and experience. The development community would select analysts from this list. In addition a process should be put in place where there is a communication process that involves MSHDA, the developer, and the analyst during the preparation of the study. There also needs to be a formal and documented appeal or cure process to mediate any disagreements in the studies findings.

- **Pass Through Loan Program**

The MHC opposes the program statement and parameters presented for the Modified Pass-Through Program in its entirety. The first draft of the new program statement was found by the Attorney General's office to be contrary to statute, even after staff's assertions to the contrary. The new draft's proposed changes continue to be at odds with the statute and make it unworkable by adding additional costs and requirements and removing its independent status. The legislative intent for Pass Through financing is as an alternative to the MSHDA Direct Lending programs.

MHC supports the creation of the loan committee and the establishment of time frames for the approval process and creating consistency in the underwriting process. However, we strongly object to the concept that MSHDA staff should dictate the type of financing that is appropriate for a given proposal; in particular that MSHDA could require that the Direct Lending Program be used rather than the Modified Pass-Through Program for a specific proposal. MSHDA's justification for this new approach is that it needs to protect its investments. Historically, however, MSHDA has looked to object facts like a market studies in making such determinations rather than subjective staff decisions.

**Conclusion:** The effect of these proposed changes will be to add so much cost to the program as to render it useless. In addition, in those rare instances where a project can bear the additional cost, MSHDA's Loan Committee can still deny a project even if it meets the intent of the program, simply "because"

**Recommendation:** Retain the process that has been in place for loan inducement on the Modified Pass-Through program as it meets the statutory requirements. No further interference should be considered or adopted. Additionally, we strongly support the immediate allocation of a \$100 million of bond cap to this program under the current rules, so it is allowed to fulfill its statutory purpose as it has each year prior to 2007.

- **Community Contribution**

MHC opposes the requirements that tax abatement must be at or below a 5% pay rate to qualify as community support. This, while not new, artificially limits development that is urgently needed. If a development is financially feasible without this additional community support it should move forward. The statutory provision of a 10% PILOT should be the only limiting factor. In the past few years, many Michigan communities are financially challenged, and this will only worsen as property values fall and tax revenues decline. This part of the Lending Parameters represent an unfunded public mandate that will chill the development of affordable housing in many areas of the state.

**Conclusion:** Since tax abatement will be harder and harder to secure at the low levels required, good projects in good areas will not be funded simply because the community hasn't met MSHDA's standard of sacrifice.

**Recommendation:** Modify the requirement to allow the statutory limit of a 10% or lower PILOT to serve as one type of community contribution under the programs.

- **Preservation**

Obtaining Capital Needs Assessments (CNAs) has become a severe bottleneck in processing Preservation projects. The failure of MSHDA to have more than one CNA consultant has fueled the industry's concern about MSHDA contracting for market studies. Claims by MSHDA that this is a 30 to 45 day process are untrue.

In addition, we strongly object to tying the use of soft financing funds to a reduction or surrender of the additional value accumulated by the property seller over the term of the loan, disingenuously titled "a premium". This requirement is in direct opposition to the foundation of real estate investment wherein a purchaser assumes some appreciation or at least return of the equity paid during the term of loan. If sound policy and mission dictate a proposed community should receive soft funds, then the Authority should provide these, irrespective of the transaction with the seller.

**Conclusion:** Preservation projects, already getting short shrift in the QAP, will have higher associated costs and delays in processing, as well as be more difficult to retain, as sellers will not be able or willing to settle for a sales price that only pays off the debt. Good affordable housing stock will be lost.

**Recommendation:** MSHDA should either contract for additional CNA consultants or allow developers to choose their own from an approved list so as to obtain CNAs that meet MSHDA published requirements. Additionally, the link between purchase price and use of soft funds should be removed from the program statements.

- **Extended Affordability Requirements**

If approved, all the new loan programs will require extend affordability restrictions to a term of 90 years. Staff's argument that previous QAPs had 99 year and longer affordability requirements is specious. The program was voluntary and the extended requirements were options to achieve higher points to compete. A handful of projects with extended requirements is vastly different from ALL affordable projects being restricted for unreasonably long periods.

**Conclusion** - As with the QAP, this will serve to limit investor interest in Michigan and as well as severely limit the exit strategies for private investors, the net effect of which will be less development activity in real dollars.

**Recommendation** Retain the affordability requirements described in the current programs (30 and 50 years, depending on program and funding sources used).

- **Timeline and Responsiveness to Industry Input**

The last revisions to the programs were made in April of 2006, and were modified to achieve consensus after comments by the industry.

The first drafts of the loan programs/parameters were presented to the public in May of 2007. The program statement regarding Pass Through followed in early June.

Meetings were held between MSHDA and the MHC on June 15<sup>th</sup>, June 26<sup>th</sup> and June 28<sup>th</sup>.

Due to continued concerns, MSHDA made a presentation to the MHC at the MHC summer meeting on July 10<sup>th</sup>. Based on level of continued concern, MSHDA's Executive Director agreed to establish and meet with small task forces to work out concerns. MHC members were assigned and the list sent to the E.D on July 11<sup>th</sup>.

MHC President met with MSHDA ED to discuss steps to resolve concerns and was told that it was "a package deal" and no further changes would be made.

September 2007, new programs sent to MHC. No material changes to most programs. The Modified Pass-Through Program changed due to Attorney General and Bond Counsel advice. MHC reiterates its position (outlined above)

November 1, 2007, MHC receives updated parameters. No material changes made.

November 20, 2007 – MHC representatives meet with MSHDA representatives regarding QAP and loan parameters. No material changes made.

It is apparent that much time and energy went into discussion of concerns raised by the MHC. It is also apparent, based on the lack of modifications to satisfactorily address the MHC concerns, that no compromise or consensus was sought and that the ED's statement of "take it or leave it" on July 11<sup>th</sup> was the major determinant in subsequent action by MSHDA.